

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #8	CCRB Case #: 202002665	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/09/2020 7:30 PM	Location of Incident: § 87(2)(b)	Precinct: 71	18 Mo. SOL 10/9/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 04/13/2020 11:57 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/13/2020 11:57 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Marlene Welch	10748	898755	071 PCT
2. POM Majid Mirza	09566	956102	071 PCT
3. SGT Keith Cheng	00644	929882	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Marlene Welch	Force: Police Officer Marlene Welch used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Majid Mirza	Force: Police Officer Majid Mirza used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Keith Cheng	Force: Sergeant Keith Cheng used physical force against § 87(2)(b)	§ 87(2)(b)
D.SGT Keith Cheng	Abuse: Sergeant Keith Cheng did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
E.SGT Keith Cheng	Force: Sergeant Keith Cheng hit § 87(2)(b) against a vehicle.	§ 87(2)(b)
F.POF Marlene Welch	Force: Police Officer Marlene Welch hit § 87(2)(b) against a vehicle.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On April 13, 2020, § 87(2)(b) filed this complaint with the CCRB over the phone.

On April 9, 2020, at approximately 7:30 p.m., PO Marlene Welch, PO Majid Mirza, and Sgt. Keith Cheng of the 71st Precinct arrested § 87(2)(b) for disorderly conduct and resisting arrest inside the § 87(2)(b) located at § 87(2)(b) in Brooklyn. PO Welch, PO Mirza, and Sgt. Cheng allegedly pushed § 87(2)(b) against the police vehicle before placing her inside (**Allegation A: Force, § 87(2)(g)**; **Allegation B: Force, § 87(2)(g)**; **Allegation C: Force, § 87(2)(g)**). Inside the vehicle, Sgt. Cheng refused to provide § 87(2)(b) with medical attention (**Allegation D: Abuse of Authority, § 87(2)(g)**). As the officers attempted to close the vehicle's door, Sgt. Cheng and PO Mirza allegedly struck § 87(2)(b)'s leg with the door (**Allegation E: Force, § 87(2)(g)**; **Allegation F: Force, § 87(2)(g)**). § 87(2)(b) was charged with disorderly conduct and resisting arrest. At the 71st Precinct stationhouse, § 87(2)(b) was transported to § 87(2)(b) Hospital.

§ 87(2)(g), § 87(4-b)

Findings and Recommendations

Allegation (A) Force: Police Officer Marlene Welch used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Majid Mirza used physical force against § 87(2)(b)

Allegation (C) Force: Sergeant Keith Cheng used physical force against § 87(2)(b)

In her CCRB testimony, § 87(2)(b) stated that while she was purchasing food inside the restaurant, she complained to an employee that PO Welch was too close to the food. PO Welch exited the restaurant after a brief verbal exchange (Board Review 01 and 02). § 87(2)(b) denied threatening PO Welch. PO Welch then reentered the restaurant with Sgt. Cheng and PO Mirza. § 87(2)(b) then told Sgt. Cheng to stand back because he was not wearing a mask during a pandemic. Sgt. Cheng and the officers then handcuffed § 87(2)(b) and escorted her out of the restaurant. As all three officers escorted § 87(2)(b) to the police vehicle, they pushed her against the rear passenger door of the police vehicle. Prior to being pushed, § 87(2)(b) did not intentionally move her body, but lost her balance. She did not further elaborate as to what losing her balance meant.

In their CCRB statements, Sgt. Cheng, PO Mirza, and PO Welch stated that when they entered the restaurant, § 87(2)(b) was yelling at PO Welch. Sgt. Cheng only recalled § 87(2)(b) saying something about “gloves” and “masks.” PO Welch stated that § 87(2)(b) called her a “bitch,” told her not to be near the food, and complained that she did not wear a mask. In response, Sgt. Cheng told § 87(2)(b) to calm down, get her food, and leave numerous times but § 87(2)(b) continued to yell. After multiple commands, Sgt. Cheng told § 87(2)(b) that she would be arrested for disorderly conduct because she was causing a crowd to gather and causing a hazardous offensive condition. All of the officers subsequently placed her in handcuffs inside the restaurant. Sgt. Cheng stated that § 87(2)(b) resisted by pushing the officers, refused to turn around, tensed up, and “flared” her arms by moving it around and away from the officers. Sgt. Cheng, PO Mirza, and PO Welch eventually placed § 87(2)(b) in handcuffs by grabbing her arms and turning her around. None of the officers recalled § 87(2)(b) having any difficulties walking. Starting at 2:39 of Sgt. Cheng's BWC, Sgt. Cheng and PO Mirza escorted § 87(2)(b) out of the

restaurant as § 87(2)(b) is screaming “§ 87(2)(b)” (Board Review 08) At 2:49, § 87(2)(b) is standing next to the rear passenger side of a police vehicle while Sgt. Cheng is holding her. It appears that Sgt. Cheng’s left arm is hooked through § 87(2)(b)’s right arm as she is rear handcuffed. At 2:51, the front of § 87(2)(b)’s body is against the police vehicle. Sgt. Cheng’s left arm is still hooked through § 87(2)(b)’s right arm at this point. At 2:53, PO Welch unlocks the front passenger door of the vehicle. PO Welch does not make any physical contact with § 87(2)(b) while they are outside of the police vehicle.

PO Mirza’s BWC was obstructed by his arm and Sgt. Cheng’s body at various points while § 87(2)(b) was by the police vehicle (Board Review 09). PO Mirza appears to be holding § 87(2)(b) as they stood outside the police vehicle. PO Mirza’s BWC does not show when or how § 87(2)(b) is placed against the police vehicle.

PO Welch, PO Mirza, and Sgt. Cheng denied pushing § 87(2)(b) against the police vehicle and did not see an officer do so (Board Review 03-05).

Although § 87(2)(b)’s body contacts the police vehicle, Sgt. Cheng’s BWC shows that § 87(2)(b) was never pushed against the vehicle as alleged, and Sgt. Cheng was holding § 87(2)(b) as he was unlocking the vehicle’s doors. § 87(2)(b) was standing inches away from the vehicle before her body contacted it. § 87(2)(g)

Allegation (D) Abuse Authority: Sergeant Keith Cheng did not obtain medical treatment for

§ 87(2)(b)
At 3:54 of Sgt. Cheng’s BWC, § 87(2)(b) screams that she could not breathe as she is seated in the rear passenger seat (Board Review 08). Between 4:51 and 6:41, § 87(2)(b) states she could not breathe over 15 times as Sgt. Cheng was trying to get her legs inside the vehicle. Starting at 5:53, § 87(2)(b) asks for an ambulance more than five times. During the aforementioned time frame, § 87(2)(b)’s breathing appears to be labored. At 6:22, Sgt. Cheng tells § 87(2)(b) that an ambulance will come once she gets to the precinct.

In her CCRB testimony, § 87(2)(b) stated that she requested medical attention at the scene of her arrest, but the officers ignored her. During the interview, § 87(2)(b) did not testify as to why she needed medical attention or that her breathing was restricted (Board Review 01 and 02).

Sgt. Cheng, PO Welch, and PO Mirza provided generally consistent accounts (Board Review 03-05). They all stated that they heard § 87(2)(b)’s requests for medical attention and that she said she could not breathe. None of the officers saw anything that restricted her breathing and they all believed that she could breathe because she was yelling and screaming. PO Welch also added that § 87(2)(b) was moving, which led her to believe that § 87(2)(b) was able to breathe.

In his CCRB testimony, Sgt. Cheng stated that he did not call an ambulance when § 87(2)(b) complained she could not breathe because they were trying to get her back to the stationhouse and calm her down before she received medical attention (Board Review 04). The transport took a few minutes. At some point after arriving at the stationhouse, an ambulance was called. Sgt. Cheng did not know who called the ambulance and he did not inform anyone that § 87(2)(b) needed medical attention because he assumed the officer processing the arrest would do so. Sgt. Cheng stated that when someone complains they cannot breathe he decides whether their complaint is valid, and if they require immediate medical attention, then he would request it.

PO Mirza stated that an ambulance was not called at the location of § 87(2)(b)’s arrest because

§ 87(2)(b) was very irate and aggressive, so they wanted to remove her from that location before getting her medical attention (Board Review 03). PO Mirza also stated that once someone is in custody, they want to get them to the stationhouse as soon as possible. PO Mirza did not recall who called the ambulance for § 87(2)(b) at the stationhouse and he did not follow up with any officers to ensure that an ambulance was called for her.

PO Welch stated that she did not immediately request an ambulance while on the scene because they were trying to get § 87(2)(b) back to the stationhouse since there was a crowd gathering (Board Review 04). PO Welch did not recall why they chose to bring her back to the stationhouse before calling an ambulance. PO Welch received CPR training from the NYPD and claimed that some of the signs that a person cannot breathe is if they are passed out, unresponsive, choking, or inability to speak. PO Welch stated that § 87(2)(b) initially refused to go to the hospital at the stationhouse, but at approximately 9:00 p.m. she requested to go to the hospital and was subsequently transported to the hospital.

Without § 87(2)(b)'s medical records, the investigation does not have the details of her treatment. Additionally, there were no entries in the Command Log noting § 87(2)(b)'s arrest or her being transported to the hospital (Board Review 07). In her CCRB testimony, § 87(2)(b) stated that she was transported to the hospital approximately 40 minutes after arriving at the stationhouse.

“In all life-threatening situations, apparent heart attack, breathing difficulties, serious fractures, severe hemorrhaging, epilepsy, extreme emotional disturbance, etc., a prisoner will be removed to the nearest hospital,” Patrol Guide Procedure 210-04 (Board Review 06).

It is undisputed that § 87(2)(b) received medical treatment while she was at the stationhouse, but according to the Patrol Guide, an officer is required to remove a prisoner to the nearest hospital when they experience breathing difficulties. The Patrol Guide does not define breathing difficulties or list objective observations to determine when a person is experiencing breathing difficulties.

During this incident, it is undisputed that § 87(2)(b) repeatedly complained she could not breathe and requested medical attention. Although § 87(2)(b) was yelling and screaming at various points, it was also depicted in the BWC footage that her breathing was labored, her speech grew faint, and her overall breathing was different from when the interaction began which is consistent with an individual experiencing breathing difficulties. Without knowing § 87(2)(b)'s medical history or observing any additional factors, Sgt. Cheng, the highest-ranking officer on the scene, decided that she did not have difficulty breathing because she was yelling and screaming. Furthermore, at the stationhouse, Sgt. Cheng did not do his due diligence as he failed to inform anyone that § 87(2)(b) needed medical attention and did not know who called an ambulance. § 87(2)(g)

Allegation (E) Force: Sergeant Keith Cheng hit § 87(2)(b) against a vehicle.

Allegation (F) Force: Police Officer Marlene Welch hit § 87(2)(b) against a vehicle.

In her CCRB testimony, § 87(2)(b) stated that after the officers placed her inside the police vehicle, she turned her body to face the officers so she could stretch her leg. § 87(2)(b) had a preexisting left knee injury and wore a leg brace at the time (Board Review 01 and 02). During her interview, § 87(2)(b) stated that her leg had to be elevated and constantly moving. While § 87(2)(b)'s left leg was still out of the vehicle, Sgt. Cheng slammed the door on her leg twice. § 87(2)(b) cried and screamed, “Ow!”

Sgt. Cheng and PO Mirza's CCRB accounts were generally consistent (Board Review 03 and 04). They stated that after § 87(2)(b) was initially placed inside the vehicle, PO Mirza announced that

§ 87(2)(b)'s hand was out of the handcuff. Sgt. Chen then went to the rear passenger side of the vehicle to assist PO Mirza with placing § 87(2)(b) back in handcuffs. § 87(2)(b) stuck either one leg or both legs out of the door during this process. Sgt. Cheng stated that that he tried to place § 87(2)(b)'s legs back inside the police vehicle by grabbing her legs and pulling it back in the vehicle. Once Sgt. Cheng pulled § 87(2)(b)'s legs inside, § 87(2)(b) continued to not let Sgt. Cheng and PO Welch close the door by trying to kick the door open with both legs by the middle of the door. § 87(2)(b)'s legs were on Sgt. Cheng's lap as Sgt. Cheng was holding them. Eventually, Sgt. Cheng was able to hold § 87(2)(b)'s legs up "a little bit," and he told PO Welch to shut the door. PO Welch was subsequently able to shut the door. Sgt. Cheng denied closing the door against § 87(2)(b)'s leg and he stated that § 87(2)(b)'s leg was never got caught between the door. PO Mirza stated that he did not recall what Sgt. Cheng did to get § 87(2)(b)'s legs into the vehicle, but he did not see Sgt. Cheng hitting § 87(2)(b)'s leg with the car door.

PO Welch's timeline of events differed from Sgt. Cheng and PO Mirza's accounts, but her account of § 87(2)(b)'s actions were similar (Board Review 05). § 87(2)(b) pushed the door opened with her foot by kicking the middle of the door, but PO Welch did not recall if § 87(2)(b)'s foot hung outside the vehicle. After they got her feet inside the vehicle, they were able to close the door. PO Welch did not recall who placed § 87(2)(b)'s feet inside the vehicle or who closed the door. PO Welch did not see an officer slam the door against § 87(2)(b)'s leg.

At 3:02 of Sgt. Cheng's BWC, Sgt. Cheng and PO Mirza places § 87(2)(b) inside the rear passenger seat of the vehicle (Board Review 08). At 3:27, Sgt. Cheng closes the rear passenger door without difficulty; the door completely shuts, and Sgt. Cheng walks away. At 4:51, Sgt. Cheng returns to the rear passenger side and he assists PO Mirza with handcuffing § 87(2)(b). At 5:23, Sgt. Cheng lifts § 87(2)(b)'s right leg while it hangs out of the vehicle and tries to push her leg into the vehicle. Sgt. Cheng continues to push § 87(2)(b)'s leg into the vehicle while PO Mirza pulls § 87(2)(b) into the vehicle from the opposite side. At 6:42, it appears that Sgt. Cheng sits inside the rear passenger seat while holding § 87(2)(b)'s leg across his chest area. At 6:43, § 87(2)(b) screams, "Ow my leg," but it is unclear what is happening due to the camera's angle. Sgt. Cheng subsequently tells PO Welch to close the door. At various points of the video, Sgt. Cheng tells § 87(2)(b) to put her leg in the vehicle. At 6:52, PO Welch closes the door from outside the vehicle, but the door does not close. It appears that something off-screen obstructed the door. At 6:56, PO Welch says, "She's pushing." PO Welch subsequently bends down, and the door is closed at 7:03. During her CCRB interview, PO Welch stated she did not recall what caused § 87(2)(b) to scream loudly and after reviewing the footage, PO Welch stated she was holding the door, but she did not recall closing it. In his CCRB testimony, Sgt. Cheng did not know what caused § 87(2)(b) to scream loudly as captured in the video and denied doing anything else besides grabbing § 87(2)(b)'s legs.

PO Mirza's BWC footage did not clearly capture this incident because PO Mirza was positioned behind § 87(2)(b) as they tried to get her inside the vehicle (Board Review 09).

It is undisputed that § 87(2)(b) had a preexisting leg injury and wore a leg brace at the time. It is also undisputed that § 87(2)(b) refused to sit in the car and did not comply with Sgt. Cheng's commands to put her leg inside the vehicle so they could shut the door. Sgt. Cheng's BWC showed Sgt. Cheng successfully closing the rear passenger door from the outside as they placed § 87(2)(b) inside the first time. There appeared to be nothing obstructing the door from closing at that point. Additionally, BWC footage corroborates Sgt. Cheng's account in that he did not close the door against § 87(2)(b)'s leg at any point. § 87(2)(g)

Although Sgt. Cheng's BWC showed PO Welch having difficulty closing the rear passenger door, due to the angle of the BWC, it is unclear what is happening or where § 87(2)(b) s leg is § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).

- _____

§ 87(2)(b)

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____